

**DISTRICT OF COLUMBIA**  
**BOARD OF ZONING ADJUSTMENT**

**Applicant's Statement of Stephanie Ajello**  
**1934 35<sup>th</sup> Place, NW (Square 1296E, Lot 312).**

**I. INTRODUCTION.**

This Statement is submitted on behalf of Stephanie Ajello (the “**Applicant**”), owner of the property located at 1934 35<sup>th</sup> Place, NW (Square 1296E, Lot 312) (the “**Property**”). The Property is currently improved with a two-story, two-unit (flat) row building (the “**Building**”). As discussed more fully below, the Applicant is proposing to do a third story and deck addition (the “**Addition**”) to the existing Building in order to increase the living space. The existing use of a flat (2-units) is considered a non-conforming use in the R-20 Zone in which the Property is located. Accordingly even though the Addition meets the development standards of the R-20 Zone,<sup>1</sup> the Applicant must seek use variance relief pursuant to C-204.1 which states that “a nonconforming use of land or structure shall not be extended in land area, gross floor area, or use intensity; and shall not be extended to portions of a structure not devoted to that nonconforming use at the time of enactment of this title.”

The proposed third story addition could qualify for a minor deviation, as the total lot occupancy of the proposed third story is only 61.2%, within the 2% flexibility; however, as the Applicant is pursuing BZA relief for a proposed deck and stair replacement, the Applicant is including the third story addition in its request, as lot occupancy is measured floor by floor. The Applicant also seeks relief from the lot occupancy and rear yard requirements to replace an existing landing and stairs to the second story with a deck and stairs. The proposal will result in a negligible increase the lot occupancy only 0.2%-- or 1.73 square feet—from 69.8% to 70%. The proposed spiral stair leading to the second story deck extends slightly further into the rear yard than the existing deck and landing; therefore, the rear yard is decreasing from 11 feet to 7.7 feet. Accordingly, the Applicant is seeking special exception relief pursuant to D-5201 from the lot occupancy requirements (D-1204.1) and rear yard requirements (D-1206.2) of the R-20 Zone as it is increasing the existing nonconforming aspects of the Building.

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## **II. JURISDICTION OF THE BOARD.**

The Board has jurisdiction to grant the use variance relief requested pursuant to Subtitle X § 1002.1(b) from the use requirements of Subtitle C § 204.1; as well as the special exception requirements of X-901.2 and D-5201.

## **III. BACKGROUND.**

### **A. Description of Property and Surrounding Area**

The Property is located in the R-20 Zone. It is a small corner lot, with a land area of 865 square feet. The existing Building is only two stories where many of the lots on this block have added a third story by right. This Building is the only 2-unit building on the block that does not have a third story. While the two properties to the south are listed as “Residential Conversion” on tax records, the buildings have a third story. Based on comments in DC Permit records, it appears the uses were abandoned some time ago. Accordingly, this is the only multi-family building in this square and as such cannot add a third story which would otherwise be permitted by right. The third story does not itself require relief; the special exception relief is only being requested for the second story deck.

Abutting the Property to the north is Whitehaven Parkway, NW. Abutting the Property to the south is a three-story row building. Abutting the Property to the west is a public alley. Abutting the Property to the east is 35<sup>th</sup> Place, NW. The area is made up of smaller lots with row dwellings, many of which have constructed third story additions as a matter-of-right.

### **B. Proposed Project**

The current Building has two stories- a first floor and second floor. There is one unit per floor and the existing units are 560 and 539 square feet, respectively. The Applicant is proposing to add a third story addition to the building and expand the upper unit by 530 square feet. The

existing Building footprint occupies 65% of the lot and the third story addition will only occupy 61.2% of the lot. The Applicant is also proposing to replace an existing deck and stairs. The replacement will very slightly increase the lot occupancy by only 0.2%-- or 1.73 square feet—from 69.8% to 70%. The proposed spiral stair leading to the second story deck extends about 3 feet further into the rear yard than the existing deck and landing; therefore, the rear yard is decreasing from 11 feet to 7.7 feet.

**IV. THE APPLICATION MEETS THE REQUIREMENTS FOR SPECIAL EXCEPTION RELIEF.**

**A. General Special Exception Requirements of Subtitle X § 901.2.**

Pursuant to Subtitle X § 901.2 of the Zoning Regulations, the Board is authorized to grant special exception relief where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, and will not tend to affect adversely the use of neighboring property.

**1. Granting of the Special Exception will be in Harmony with the General Purpose and Intent of the Zoning Regulations and Zoning Maps.**

The granting of the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The special exception simply permits a minimal increase in lot occupancy, within the permitted 70% for obtaining special exception, and allows the applicant to increase the building by one story that is still below the permitted height limitations for the zone. Accordingly, the proposed Project will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.

**2. The granting of the special exception will not tend to affect adversely, the Use of Neighboring Property in accordance with the Zoning Regulations and Zoning Maps.**

The granting of the special exception will also not tend to adversely affect the use of neighboring properties, as the proposal simply replaces an existing deck and the overall increase in lot occupancy is equivalent to only 1.73 feet. The third story addition is only 1.2% over the permitted 60% lot occupancy in the zone and occupies less of a footprint than the existing Building.

**C. Specific Special Exception Requirements of Subtitle D § 5201.4.**

In reviewing applications for a special exception under the Zoning Regulations, the Board's discretion is limited to determining whether the proposed exception satisfies the relevant zoning requirements. If the prerequisites are satisfied, the Board ordinarily must grant the application. See, e.g., *Nat'l Cathedral Neighborhood Ass'n. v. D.C. Board of Zoning Adjustment*, 753 A.2d 984, 986 (D.C. 2000). The Applicant seeks special exception relief from the lot occupancy and rear yard requirements pursuant to D-5201.4. The proposal meets the requirements as follows:

**5201.4: An application for special exception relief under this section shall demonstrate that the proposed addition, new principal building, or accessory structure shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, specifically:**

**(a) The light and air available to neighboring properties shall not be unduly affected;**

The construction of the deck shall not impact the light and air available to neighboring properties. The deck will replace an existing landing and set of stairs which already abuts the only adjoining neighbor to the south and the increase in lot occupancy is negligible.

**(b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;**

The deck and stairs shall not unduly compromise the privacy of use and enjoyment of neighboring properties as it simply replaces the existing deck and stairs which have existed in the same location for many years.

**(c) The proposed addition or accessory structure, together with the original building, or the new principal building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the street or alley frontage;**

The deck is replacing an existing landing and the stairs in the same location. The third story is permitted as a matter of right and will occupy less of the lot than even the existing two stories below. Accordingly, the proposed addition as viewed from the street and alley shall not

substantially visually intrude upon the character scale and pattern of houses along the street or alley.

**V. THE APPLICATION MEETS THE REQUIREMENTS TO GRANT USE VARIANCE RELIEF.**

The Applicant is requesting use variance relief pursuant to C-204.1 in order to minimally increase an existing unit. The Board is authorized to grant use variance relief where it finds that three conditions exist:

- (1) The property is affected by exceptional size, shape, or topography or other extraordinary or exceptional situation or conditions;
- (2) The owner would encounter an undue hardship if the zoning regulations were strictly applied; and
- (3) The variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

*See French v. District of Columbia Board of Zoning Adjustment*, 628 A.2d 1023, 1035 (D.C. 1995); *see also, Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987).

The variance procedure has many purposes. It is designed to provide relief from the strict letter of the regulations, protect zoning legislation from constitutional attack, alleviate an otherwise unjust invasion of property rights and prevent usable land from remaining idle. These purposes infuse meaning into the phrase “exceptional and undue hardship.” *Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A.2d 535, 541-42 (1972).

For the Board to grant use variance relief, “it must be shown that the regulations ‘preclude the use of the property in question for any purpose for which it is reasonably adapted,

i.e., can the premises be put to any conforming use with a fair and reasonable return arising out of the ownership thereof?" *Palmer v. BZA*, at 542, citing 2 A. Rathkopf, *The Law of Zoning and Planning*, Note 21, at 45-5 (3d ed. 1962).

A. Unique Physical Aspect or Other Exceptional Situation

In order to prove an extraordinary or exceptional condition, or uniqueness, the Applicant must show that the property has a peculiar physical aspect or other extraordinary situation or condition. *Monaco v. D.C. Board of Zoning Adjustment*, 407 A.2d 1091, 1096 (D.C. 1979). The Court of Appeals held in *Clerics of St. Viator v. D.C. Bd. of Zoning Adjustment*, 320 A.2d 291 (D.C. 1974) that the exceptional situation or condition standard goes to the property, not just the land; and that "...property generally includes the permanent structures existing on the land." *Id.* at 293-94. The Court held that the exceptional situation standard of the variance test may be met where the required hardship is inherent in the improvements on the land (i.e., the building or structure) and not just the land itself. In *Monaco v. D.C. Board of Zoning Adjustment*, the Court of Appeals held that the history of a property could be considered in making the determination of uniqueness. In that case, the Court affirmed the BZA's broad interpretation of the uniqueness test and the Board's ability to consider the history of the Applicant, its traditions, as well as the existing structure on the property.

The Property is unique because of the existing improvements on the Property. The Building was constructed in 1935 and the first certificate of occupancy for a flat was issued in 1958 noting that the previous use was also a flat, indicating that the C of O was just continuing the previous use. The original permit from 1935 could not be obtained, accordingly, this is the best evidence that the building has been used as a flat certainly since 1958 and likely since 1935. Accordingly, the use has existed in this building for at least 64 and possibly 87 years.

All other buildings on this block are currently used as single-family homes. The tax records show that at one point, the two buildings to the south may have been configured as flats, but those uses have since been abandoned. There is also some question about how the buildings were configured insofar as the inspection comments for the property directly to the south indicate that the configuration was not consistently maintained or obvious during inspections. Whereas the subject Property's 2012 inspection had no issues, and it was immediately confirmed to be a flat. Accordingly, this is the only property used as a flat in the block and in the entire area based on a search of the available property records. The single-family homes on the block are all permitted to construct the proposed third story addition by right, as many on the block have already done. Even without the third story addition, the Applicant would still have to ask for use variance relief for the deck, unlike the other properties which would only be required to obtain special exception relief for the same proposal. For example, the three homes directly to the south of the subject Property have third story additions (1932, 1930 and 1928). Others further down the block have also been extended or expanded. Photos of the block have been submitted to the record with this Application.

**B. Strict Application of the Zoning Regulations Would Result in an Undue Hardship.**

An owner is presented with an undue hardship when their "property cannot be put to any zoning-compliant use for which it can be reasonably adapted, i.e., can the premises be put to any conforming use with a fair and reasonable return arising out of the ownership thereof." *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 542 (D.C. 1972). The Applicant asserts that it clearly meets this standard as articulated by the Court in *Palmer*, as using the subject property for any conforming use would not result in a fair and reasonable return.

In *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1171

(D.C.1990), the Court of Appeals held that “at some point economic harm becomes sufficient, at least when coupled with a significant limitation on the utility of the structure.”

Were the zoning regulations strictly enforced, the Applicant would effectively be prevented from ever improving the property, unless of course she eliminated one of the units. Eliminating one of the units would result in an undue hardship to the Applicant. First, it would result in the loss of value of a 560 square foot 1-bedroom residence. There are not any comps in the area for this exact scenario, given that it is the only flat in the area. The nearby comps have a large range for the price per square foot, listed between \$550-\$1200. Using the median point between the two allows for a price point of \$875 per square foot in this area. Using that price per square foot, the value of the 560 square foot unit is approximately \$500,000. And the second-floor unit—the one proposed to be expanded—is slightly less at approximately \$470,000. The addition itself is only 530 square feet, so giving up a second unit valued \$500,000 to allow for an additional 530 square feet of area which would not be worth \$500,000 given cost of construction and added value, is not a feasible option.

But that is not the only cost the Applicant would face, as the Building is configured as two distinct units with separate entrances and kitchens. Accordingly, the Applicant would be faced with substantial additional renovation and expense if the building had to be redesigned to remove one dwelling unit and make the building a single-family dwelling to comply with the current R-20 regulations. For example, DCRA does not permit two separate ranges or wet bars—essentially the elements of a second kitchen—in any single-family home in the district, regardless of any covenants. So, the Applicant would at a minimum be required to demolish and renovate the existing kitchen area, requiring a substantial amount of investment all in an effort to



remove a valuable income producing housing unit existing for at least 64 years from the housing supply.

Accordingly, without the relief, no improvements to the building would ever be possible, or rather would not be feasible from an economic perspective, because the cost to convert the property to a single-family home, coupled with the loss of value from the loss of a housing unit would far exceed the possible value added to the property by an addition.

C. Relief Can be Granted without Substantial Detriment to the Public Good and without Impairing the Intent, Purpose, and Integrity of the Zone Plan.

Relief can be granted without substantial detriment to the public good and can be granted without impairing the intent, purpose, and integrity of the Zone Plan. The Building is already configured for use as a flat and has been configured as such for at least 64 and possibly 87 years. The Applicant is simply proposing to update the building through a third story addition which conforms to all development standards of the R-20 Zone and a deck which would otherwise be permitted via special exception only, but for the existing 2-units.

**VI. CONCLUSION.**

For the reasons outlined in this Applicant's Statement, the Applicant respectfully requests the variance relief and special exception relief as detailed above.

Respectfully Submitted,

*Alexandra Wilson*

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Alexandra Wilson  
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